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No. 90-755

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE SUPREME COURT OF THE UNITED STATES

1990 TERM

ELIZABETH WARNE, Petitioner

v.

SUPERIOR COURT OF CALIFORNIA,
Respondent

v.

KAISER PERMANENTE MEDICAL CENTER;
SOUTHERN CALIFORNIA PERMANENTE MEDICAL
CENTER; KAISER SELF INSURANCE PROGRAM;
MICHAEL STOLZBERG and STOLZBERG &
SPENCER; DR. JOHN SELLMAN, M.D.;
DR. IRWIN BLISS, M.D.;
DR. PATRICK ZACCALINI; DR. JOHN
HOWARD, M.D.; DR. ALLEN BURSK, M.D.
Real Parties in Interest

BRIEF OF JOHN SELLMAN, M.D.

(BY SPECIAL APPEARANCE ONLY), REAL
PARTY IN INTEREST, IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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(Specially Appearing)

SUMMARY OF PETITIONER'S MISSTATEMENTS

OF LAW AND FACT

In her Petition for Writ of Certiorari, petitioner misstates the law and the facts of this case, inter alia, in the following respects.

1. Petitioner misleadingly attempts to "lump together" all lower court rulings and the numerous appeals thereof, even though there were numerous defendants named in this action, for the most part represented by separate counsel. The orders with respect to each defendant are not summarized by petitioner, and this Honorable Court is left with the unenviable task of sifting through the Petition just to determine the status of the litigation with respect to each party! In fact, the only lower court order ever issued with respect to Dr. Sellman was an order quashing service of the Summons on Third

Amended Complaint and Third Amended Complaint for failure to comply with the requirements of California Code of Civil Procedure, Section 415.20(b).

2. Petitioner fails to mention that the California Court of Appeals (Second District) and the California Supreme Court affirmed the lower court's finding of a lack of "due diligence" in attempting to effect personal service on Dr. Sellman.

3. As appears from petitioner's own summary of the "Questions Presented For Review" at page "i" of the Petition for Writ of Certiorari, Petitioner is confused as to the role of this Court and as to the nature of the relief that she requests. The "Questions Presented For Review" refer to the purportedly improper sustaining of a demurrer and, secondly, a request that this Court issue an order requiring Los Angeles County Superior Court Judge Ross to disqualify himself and vacating all of his

orders. The order quashing service on Dr. Sellman was issued by Judge Ronald Sohigian, not by Judge Ross!

4. In support of the unique "relief" requested by petitioner, she refers to the doctrine of stare decisis and the Liljeberg doctrine, both of which are clearly not applicable to the granting of a motion to quash service of summons. In fact, in the body of the Petition, petitioner relies on the doctrine of stare decisis at page 9, Point II, but cites absolutely no authority for its application in the instant case. Similarly, the Liljeberg case is cited at page 12, but the parties and this Court are left in the dark as to its supposed application to this case.

5. Petitioner's groundless Petition for Writ of Mandate (seeking review of the granting of Dr. Sellman's Motion to Quash Service of Summons) was denied by the California Court of Appeals (Second District) on July 16, 1990, without further

comment; her Petition for Review to the California Supreme Court was denied, without comment as well.

Just as she failed to show any justification for the Appellate Court to overrule Judge Sohigian's ruling in the trial court (based on oral and documentary evidence presented by both sides), and just as she failed to show any grounds for California Supreme Court review, she has again failed to show why the highest court in the land should concern itself with a ruling on a Motion to Quash Service of Summons. In bringing this Petition, petitioner has blithely continued her abuse of the judicial system, has ignored the function of the United States Supreme Court and continues to make a mockery of the judicial process.

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(BY SPECIAL APPEARANCE ONLY), REAL
PARTY IN INTEREST, IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

Real party in interest, JOHN SELLMAN,
M.D. (specially appearing), submits the
following Brief in Opposition to Petition
for Writ of Certiorari:

I

PETITIONER HAS FAILED TO ESTABLISH
THE JURISDICTION OF THIS COURT TO
HEAR HER APPEALS, ESPECIALLY WITH
RESPECT TO DR. SELLMAN

The Petition includes a conclusionary blurb at page "vii", purportedly invoking the jurisdiction of this Court under 28 USC 1257(a). Petitioner does not, however, explain how that Section applies to the case at bar. As best as can be gleaned from the body of the Petition, petitioner is claiming some sort of denial of due process. Yet, nowhere does she explain the nature of such "denial", other than in her statement of "Questions Presented For Review," where she states that one such question is whether she was "denied due process of law when the Superior Court decided a demurrer on missing court records." Assuming the due process clause is the basis of petitioner's invocation of the jurisdiction of the United States

Supreme Court, she concedes that the Supreme Court does not have jurisdiction to review her claims with respect to Dr. Sellman! Specifically, the lower court rulings with respect to Dr. Sellman did not concern the sustaining of a demurrer, and there is no contention that they were based on "missing court records" as is contended with respect to the ruling on the demurrer. In fact, petitioner does not even state which defendant(s) are supposedly encompassed by the unique "due process" argument.

Finally, the numerous and sundry United States Supreme Court decisions cited by petitioner have no bearing on the type of basic law and motion matters that are the subject of the lower court rulings "appealed" by petitioner, let alone the ruling on Dr. Sellman's Motion to Quash Service of Summons. For example, petitioner cites cases dealing with the right to privacy in the context of a

woman's right to an abortion [Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973)] and other intimate matters [Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965)], a prisoner's right to access to the courts and to legal research facilities [Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1971), and others dealing with the "sanctity" of the due process clause. [Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430 (1945)]].

II

THE MATTERS RAISED BY PETITIONER DO NOT SUPPORT THE GRANTING OF A WRIT OF CERTIORARI

Rules of the Supreme Court of the United States, Rule 10, sets forth the matters to be considered by the United States Supreme Court in deciding whether to exercise its discretion in favor of granting a Writ of Certiorari. Rule 10 states, in pertinent part, as follows:

"1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor."

The considerations set forth in the subparagraphs of Rule 10 call for a denial of the within Petition. That is, there has been absolutely no showing that the California Supreme Court ["state court of last resort" as described in Rule 10(b)] has rendered a decision on a Federal question that conflicts with a decision of another State court, or that any court in this case decided "an important question of federal law" which should be decided by the United States Supreme Court, or that any court "has decided a federal question in a way that conflicts with applicable

decisions of this Court", as described in Rule 10(c).

To the contrary, the California Court of Appeal (Second Appellate District) and the California Supreme Court denied the petitions before them without addressing any "federal question."

III

THE MOTION TO QUASH WAS PROPERLY GRANTED BY THE TRIAL COURT AND PETITIONER'S REQUESTS FOR APPELLATE RELIEF WERE PROPERLY DENIED BY THE APPELLATE COURT AND BY THE CALIFORNIA SUPREME COURT

In the Los Angeles County Superior Court, California Court of Appeals (Second District) and California Supreme Court, plaintiff continually re-submitted her "declarations" in an obviously futile attempt to establish proper service.

Suffice it to say that California Code of Civil Procedure, Section 415.20(b) requires due diligence in effecting personal service and the burden is on

plaintiff to establish "reasonable diligence". [Evart v. Superior Court (1979) 89 Cal.App.3d 795, 799-802, 152 Cal.Rptr. 836]. Rather than establishing grounds for United States Supreme Court review, petitioner merely requests this Court to overturn all adverse rulings and disqualify the Los Angeles Superior Court judge perceived as "responsible" for such adverse rulings. [Note that the granting of the Motion to Quash Service of Summons on the part of Dr. Sellman was by Los Angeles Superior Court Judge Ronald Sohigian, not Judge Ross, who is the subject of petitioner's request for "disqualification."] Even if this Court were empowered to grant the relief requested by petitioner, she has not established grounds for doing so.

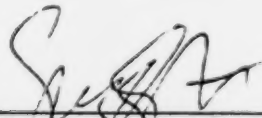
IV

CONCLUSION

Petitioner is grasping at straws in an improper and unjustified attempt to have the United States Supreme Court totally disregard the trial court, Appellate Court and State Supreme Court rulings merely because they were not to her liking. Such "forum shopping" should not be permitted. For the foregoing reasons, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

GITTLER & WEXLER



GREGG J. GITTLER
Attorneys for Real Party
in Interest,
JOHN SELLMAN, M.D.
(Specially Appearing)